

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION

03 JAN -6 PM 3:31

U.S. DISTRICT COURT  
N.D. OF ALABAMA

MARLON TUCKER,

Plaintiff,

vs.

CV 02-B-2253-NE

WARDEN BILLY MITCHEM and  
SERGEANT STEVE PELTZER,

Defendants.

ENTERED  
JAN 6 2003

MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on December 4, 2002, recommending that this action filed pursuant to 42 U.S.C. § 1983 be dismissed under 28 U.S.C. § 1915A(b) for failing to state a claim for which relief can be granted. The plaintiff filed objections to the report and recommendation on December 19, 2002. In an unsworn document, plaintiff restates the facts of his original complaint and elaborates on that complaint by claiming that he suffered migraine headaches as a result of being required to pick tomatoes in the August heat and the defendants notified Naph Care “to not see any farmers that are being used to pick tomatoes.”

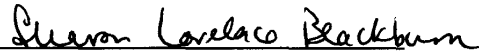
Plaintiff also claims that he signed up for medical treatment on August 27, and 28, 2002, but did not receive medical care for his complaints of headaches, running nose, and fever. Plaintiff attaches copies of what he claims are the requests he submitted, but he does not say to whom he delivered them. The request forms are unsigned by plaintiff and do not indicate they were delivered to either of the defendants named in this lawsuit. It is unclear whether plaintiff is attempting to add the claim that he has been denied adequate medical treatment while incarcerated at Limestone

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Correctional Facility, or is merely trying to rebut the conclusion of the magistrate judge that he did not suffer any physical injuries as a result of being forced to pick tomatoes in the heat. In either case, plaintiff has failed to state a claim of constitutional proportion against either of these defendants.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the Court is of the opinion that the magistrate judge's report is due to be and is hereby ADOPTED and the recommendation is ACCEPTED. Accordingly, the complaint is due to be dismissed pursuant to 28 U.S.C. § 1915A(b). A Final Judgment will be entered.

DATED this 6th day of January, 2003.

  
SHARON LOVELACE BLACKBURN  
UNITED STATES DISTRICT JUDGE